

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL P. RYAN, NORMAN J. GLOMSKI and HENRY M. HUND

Appeal No. 2005-1412
Application No. 10/049,697

ON BRIEF

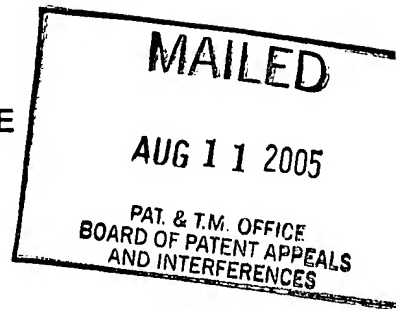
Before MCQUADE, NASE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 9-26, which are all of the claims pending in this application.

BACKGROUND

The appellants' invention relates to refuse collection vehicles (RCVs). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.



The examiner relied upon the following prior art references of record in rejecting the appealed claims:

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|----------------------------|-----------|----------------------|
| Dempster et al. (Dempster) | 3,202,305 | Aug. 24, 1965 |
| Schäffler | 4,096,959 | Jun. 27, 1978 |
| Winter | 4,986,716 | Jan. 22, 1991 |
| Zanzig et al. (Zanzig) | 6,183,185 | Feb. 6, 2001 |
| | | (filed Jun. 7, 1995) |

The following rejections are before us for review.

Claims 9-26 stand rejected under 35 U.S.C. § 112, first paragraph, because, according to the examiner, the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the invention commensurate in scope with these claims.

Claims 9-26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellants regard as their invention.

Claims 9, 10, 12 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Zanzig in view of Schäffler.

Claims 11 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Zanzig in view of Schäffler and Dempster.

Claims 15, 16, 18, 19, 21-23 and 25 stand rejected under 35 U.S.C. § 103 as being unpatentable over Zanzig in view of Schäffler and Winter.

Claims 17, 20, 24 and 26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Zanzig in view of Schäffler, Winter and Dempster.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the non-final rejection (mailed April 27, 2004) from which appellants have appealed and answer (mailed November 15, 2004) for the examiner's complete reasoning in support of the rejections and to the brief (filed July 27, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The basis of the examiner's rejection of claims 9-26 under the first paragraph of 35 U.S.C. § 112 is that the appellants' specification, "while being enabling for a method of and means for producing front loader, side loader, and rear loader RCVs, does not reasonably provide enablement for a fleet of such vehicles" (rejection, page 2). According to the examiner (rejection, pages 2-3), the appellants' specification "does not provide for a fleet of such vehicles *per se*, nor does it even set forth of what such a fleet would consist."

Insofar as the enablement requirement is concerned, the dispositive issue is whether the appellants' disclosure, considering the level of ordinary skill in the art as of the date of the appellants' application, would have enabled a person of such skill to

make and use the appellants' invention without undue experimentation. In re Strahilevitz, 668 F.2d 1229, 1232, 212 USPQ 561, 563-64 (CCPA 1982). In calling into question the enablement of the appellants' disclosure, the examiner has the initial burden of advancing acceptable reasoning inconsistent with enablement. Id.

The appellants' specification discloses, with particular reference to Figure 1, a manufacturing process for producing a variety of different refuse collection vehicles (RCVs) each having any one of a number of different chassis, any one of a variety of body sizes or capacities and one of three basic configurations (front loader, side loader and rear loader) on a single production line. Each RCV comprises a chassis, a body module, a hopper module for receiving refuse and a tailgate module. One of the key components in the appellants' process is the provision of body modules, hopper modules and tailgate modules wherein "[t]he cross-sectional perimeter of the tailgate module 82, the body module ends 74, 76 and the hopper module 92 where they mate with or overlie each other are identical throughout the line of RCVs (front loader, side loader, rear loader and modifications and combinations thereof)" (specification, page 13). This compatibility of every body module with any hopper and tailgate for any of front loader, side loader and rear loader configurations permits RCVs of side loader, front loader and rear loader configurations to be produced on a single production line. The appellants' specification (page 4) also cites as objectives of their invention "to provide a method of fabricating a fleet of diverse refuse collection vehicles utilizing mutual tooling, jigs and fixtures" and "the provision of means of producing a fleet of

refuse collection vehicles sharing numerous common parts, components and subassemblies.”

In light of the disclosure discussed above, it certainly appears that one of ordinary skill in the art at the time of the appellants’ invention would have been able to manufacture a fleet of RCVs including front loader, rear loader and side loader RCVs on a single production line using body modules having ends which are adapted to mate with hoppers and tailgates for any of front loader, rear loader and side loader configurations. As the examiner has failed to provide any evidence or explanation as to why this would not be the case, the enablement rejection cannot be sustained.¹

The examiner’s rejection of claims 9-26 under the second paragraph of 35 U.S.C. § 112 likewise cannot be sustained. The basis of this rejection is that, according to the examiner, it is not clear what is meant by the term “fleet” (rejection, page 3). Specifically, the examiner points out that the term “fleet” is normally understood to be a collection of objects owned, operated, or in the control of a single entity and that the appellants’ specification “provides no evidence that fleet as used in the claims would have such a meaning” (rejection, page 3). The term “fleet” is used on page 4 of the appellants’ specification and it is apparent that the objective of the disclosed manufacturing process is to produce a fleet of RCVs of various configurations (front

¹ The 35 U.S.C. § 112, first paragraph, rejection before us is one of lack of enablement, not lack of written description. Nevertheless, inasmuch as some of the examiner’s rationale for the rejection appears to be directed to written descriptive support rather than enablement, it is worthy of note that original claim 1 provides descriptive support for a series of RCVs comprising two of a front loader RCV, a side loader RCV and a rear loader RCV.

loader, side loader and rear loader). Inasmuch as the usual and customary meaning of the term “fleet” is a collection of objects owned, operated, or in the control of a single entity, as agreed by both the examiner and the appellants, it seems clear to us that one of ordinary skill in the art would have understood the term “fleet” as used on page 4 of the appellants’ specification in this manner and the examiner has not cogently explained why this would not be the case. Accordingly, the examiner’s assertion that the meaning of the term “fleet” is not clear is not well supported.

We turn our attention next to the examiner’s rejection of claim 9 as being unpatentable over Zanzig in view of Schäffler. In making the rejection, the examiner determined that Zanzig disclosed the subject matter of claim 9 with the exception of the body 50, hopper 57 and tailgate assembly 55 being distinct modules. The examiner further determined that it would have been obvious to construct the bodies, tailgates and hoppers of Zanzig as separate modules, as shown by Schäffler, “as this is a well known type of vehicle construction in the refuse collection art, and would preclude the necessity of having to change the entire body, hopper, and tailgate as a unit” (rejection, page 4). The appellants have not disputed that such a modification of Zanzig would have been obvious.

Rather, the appellants appear to be arguing that Zanzig lacks any disclosure that the body modules of the front loader RCV (Figures 21 and 22) and side loader RCV (Figures 1 and 2) have similar ends (brief, pages 10-11). Initially, we note that “similar” is a broad term requiring nothing more than “having a resemblance” (Webster’s New

World Dictionary, Second College Edition (Simon and Schuster 1984)). Even a cursory review of Figures 1-2 and 21-22 indicates a striking resemblance between the front and rear ends of the body 50 in the side loader vehicle and the front loader vehicle.

Moreover, as pointed out by the examiner (answer, page 5), the body is identified using the same reference numeral 50 in Figures 1-2 and Figures 21-22. Inasmuch as Zanzig's written specification fails to indicate any difference between the body 50 in Figures 1-2 and the body 50 in Figures 21-22, the examiner's contention that this would indicate to one of ordinary skill in the art that the bodies are the same or at least that there are no substantial differences between them, especially in light of the provision in 37 CFR § 1.84(p)(4) that "the same reference character must never be used to designate different parts," is well founded.

With regard to the statement on page 10 of the appellants' brief that the Zanzig patent is assigned to and owned by the assignee of the present invention and appellants' offer to provide an affidavit from the inventors as to the showings in the Zanzig reference, we note that (1) no such affidavit is before us and (2) the test for obviousness is not what the inventors of a reference patent contemplated or intended to disclose or what said inventors appreciated as important or critical. Rather, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

For the foregoing reasons, the arguments in the appellants' brief fail to persuade us of any error in the examiner's rejection of claim 9 as being unpatentable over Zanzig in view of Schäffler. The rejection is thus sustained. The appellants have opted not to separately argue the like rejection of claims 10, 12 and 13 or the rejections of claims 11 and 14 as being unpatentable over Zanzig in view of Schäffler and Dempster, claims 15, 16, 18, 19, 21-23 and 25 as being unpatentable over Zanzig in view of Schäffler and Winter and claims 17, 20, 24 and 26 as being unpatentable over Zanzig in view of Schäffler, Winter and Dempster apart from the rejection of claim 9, thereby allowing these claims to stand or fall with claim 9. See In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978). Thus, the rejections of these claims are sustained as well.


CONCLUSION

To summarize, the rejections of claims 9-26 under 35 U.S.C. § 112, first and second paragraphs, are reversed and the rejections of claims 9-26 under 35 U.S.C. § 103 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED


JOHN P. MCQUADE
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge


JENNIFER D. BAHR
Administrative Patent Judge

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Albert W. Davis, Jr.
6037 W Robin Lane
Glendale, AZ 85310